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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of

JANICE M. SCANTLAND

) MM DOCKET NO. 93-127

)

) BPH-920113MC

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Exhibits:

1. Declaration of Robert G. Casagrande
2. Declaration of Mark S. Litton
3. Opinion letters in June 1991 by Haley,
Bader & Potts
4. 1992 engineering report regarding WRNJ (AM)
5. 1993 report by Mr. Litton regarding WRNJ (AM)
6. Maintenance logs of of WRNJ (AM)
7. Maintenance log of WWHT (FM)
8. Copies of 1991 annual employment reports
9. Copies of 1992 annual employment reports
10. Copies of 1991 annual ownership reports
11. Evidence regarding 1992 annual ownership reports
12. Letter regarding consummation of 1991 buyout of
stock of Messrs. Riggs and Hutchinson

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of) MM DOCKET NO. 93-127
)
JANICE M. SCANTLAND) BPH-920113MC
)
ROBERT G. CASAGRANDE) BPH-920115ME
)
For Construction Permit for)
New FM Station on 104.3 MHz)
at Richwood, Ohio)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Hon. Arthur I. Steinberg
Administrative Law Judge

OPPOSITION TO PETITION TO ENLARGE ISSUES

I.
Summary

1. Mrs. Scantland cannot prevail in this proceeding on a straight comparative basis. The integration proposals of the two applicants are approximately equal. Mrs. Scantland must be tagged with a decisive diversity demerit for her ownership interest in an FM radio station in Marion, Ohio, located some 15 miles from Richwood, whose primary service area will substantially overlap the primary service area of the proposed Richwood station, i.e., the respective 1.0 mv/m contours. Mrs. Scantland is the Vice Chair, a director and 20% stockholder of the Marion FM station; her husband, is the Chair, a director and 55% stockholder of the FM station. Employees of that station have been used to conduct investigations for Mrs. Scantland's petition to enlarge issues in this proceeding. She has not committed to divest this other broadcast interest 15 miles up the road with overlapping primary service areas. Mr. Casagrande has committed to divest his other broadcast interest and, thus, has no diversity demerit.

smallest minority stockholder of an applicant represented by attorney Thomas Root in a challenge of a license renewal application. The unresolved issue at the time of settlement related to failure to provide ownership and financial documents at the hearing in a situation where such documentation was in "considerable disarray" for which Mr. Root was to become well known. (i) It is not at all clear to a lawyer, let alone a non-lawyer such as Mr. Casagrande, that the issue was a "character" issue when it spoke in terms of potential disqualification for violation of "filing, reporting and candor requirements." (ii) The concept of when an application is "dismissed with prejudice" calling for a "yes" answer to FCC Form 301 is a matter of legalese regarding which even esteemed counsel for Mrs. Scantland apparently are not crystal clear. See items (c) and (d), infra.

(b) That Mr. Casagrande should have answered a question on the Richwood application "yes" to indicate he was a party to an application for Englewood, Ohio which was settled and "dismissed with prejudice." The experienced communications counsel (Mr. Van Horn) who prepared the Richwood application for Mr. Casagrande, containing this omission, was keenly aware of Mr. Casagrande's role as a party to the Englewood settlement since said counsel represented one of the other parties involved in that very settlement.

(c) That Mr. Casagrande should have reported dismissal of an application for a new FM station in St. Mary's, Ohio, in which he had an interest. There were no competing applications and

this application, filed by Mr. Root, was dismissed with the express statement that it could be refiled if certain technical changes were made. Accordingly, the application was not "dismissed with prejudice" and FCC Form 301 did not call for the reporting of this dismissal.

(d) That Mr. Casagrande should have reported the return of an application for a new FM station in Ada, Ohio in which he had an interest. This application, also filed by the ubiquitous Mr. Root, was returned, not dismissed, and FCC Form 301 did not call for the reporting of a returned application.

(e) That Mr. Casagrande should have amended the Richwood application to report that he has an interest in an application for a permit for a new noncommercial educational FM station in Columbus, Ohio. The Columbus application was filed in October 1992; the Richwood application was amended to report the Columbus FM application in June 1993 contemporaneously with the filing of Mr. Casagrande's integration and diversification statement, which also reported the Columbus FM application. Both reports of the Columbus FM application were filed at the initiative of Mr. Casagrande and his current communication counsel before Mrs. Scantland's petition to enlarge issues was filed. The obligation to file an amendment of a commercial FM application to report the subsequent filing of an application for a noncommercial educational FM station is not something of which a non-lawyer applicant (such as Mr. Casagrande) necessarily would be on notice on the face of FCC Form 301. Mr. Casagrande relied upon current

communications counsel in this regard, and such counsel has acknowledged responsibility for the tardy, albeit voluntary, filing of the amendment.

(f) That Mr. Casagrande should have amended the Richwood application to report that FCC Form 316's were filed, approved and have been consummated to assign the licenses of three radio stations from one corporation (M.M. Group, Inc.) to another corporation (Tel Lease, Inc.) in a proforma transaction in which there was no change in the ownership interests in the corporations (i.e., Messrs. Casagrande and Mark S. Litton each are 50% stockholders in both corporations); also, the filing of an option agreement for Mr. Casagrande to acquire Mr. Litton's 50% ownership interest if and when an FCC Form 315 were to be filed and approved by the Commission approving such a transfer of control. We disagree that any of this should have been the subject of an amendment of the Richwood application, which identified Mr. Casagrande as an officer, director and 50% owner of M.M. Group, Inc., licensee of the stations. The change of that status solely from one corporation to another corporation accomplished on FCC Form 316 is not a substantial change in the information in the application. Nor is the unexecuted option, which is not a cognizable interest until and unless it is exercised. 47 C.F.R. §73.3555(f), Note 2(f). If and when the FCC Form 315 is filed under which Mr. Casagrande seeks approval of his acquisition of a controlling interest, then an amendment of the Richwood application would be in order. Nonetheless, in

selecting representative documents regarding his other broadcast interests to be furnished to Mrs. Scantland in the instant Richwood proceeding, Mr. Casagrande voluntarily selected and furnished copies of the FCC Form 316's that were filed in the matter.

(g) That Mr. Casagrande should have amended the Richwood application to report the recent filing of a multi-million dollar civil action by a bank against M.M. Group, Inc. and the appointment of a receiver by a federal court in Ohio. We disagree that such an amendment was required. In the Richwood application, Mr. Casagrande's interests in the radio stations formerly licensed to M.M. Group, Inc. was disclosed, with a divestiture commitment and further a statement that Mr. Casagrande was in the process of divesting the stations. The FCC Form 316 application for consent to assignment of the licenses of three stations was filed with the Commission on May 13, 1993. Within less than 30 days, Mr. Casagrande voluntarily selected a copy of that FCC Form 316 to provide to Mrs. Scantland in document production. FCC Form 301 does not call for information concerning the filing of lawsuits, even multi-million dollar lawsuits, receivership, bankruptcy or similar proceedings against an applicant or a company in which an applicant has an interest, regrettably, a commonplace occurrence for broadcast licensees in the past few years. Nor is there any reason why this lawsuit and receivership will be a matter of decisional significance under the designated comparative issues in this proceeding. And if they do

not invalidate the basis for the applicant's financial certification, which they do not, there is no reason to amend the financial portion of the application.

(h) That Mr. Casagrande should have reported the recent filing of a lawsuit to collect fees filed by former communications counsel, the firm of Haley, Bader & Potts. Corporations in which Mr. Casagrande has had an interest, who have paid legal fees in excess of \$100,000 to Haley, Bader & Potts over a period of only a few years, contest the lawsuit that additional fees in the amount of some \$288,000 are still due. In addition, Mr. Casagrande contests any claim against him individually for the alleged debts of corporations for which he was never personally liable. FCC Form 301 does not call for information concerning the filing of lawsuits such as this against an applicant or a company in which an applicant has an interest. Nor is there any reason why this lawsuit will be a matter of decisional significance under the designated comparative issues in this proceeding. And if the lawsuit does not invalidate the basis for the applicant's financial certification, which it does not, there is no reason to amend the financial portion of the application.

5. The two cases cited by Mrs. Scantland (petition at 9) do not support the requested hearing issues for so-called reporting violations. Merrimack Valley Broadcasting, Inc., 99 FCC2d 680, 683 n. 9, 57 RR2d 713, 715-16 (Commission 1984), involved the failure of an applicant in a comparative hearing for AM and FM

stations in Nashua, New Hampshire to report that members of the immediate family of the applicant parties had purchased a

directly following hearings on non-reporting issues earlier in the proceeding in the Merrimack case relied upon by Mrs. Scantland. There has been no pattern of nondisclosure, carelessness or inattentiveness. None of the eight items is of decisional significance. Only three items involved clear (albiet inconsequential) violations, i.e., two cases that were settled in which the applications were "dismissed with prejudice" (an item of legalese involving applications of which Mr. Casagrande's then communications counsel was aware) and a delay in amending the application to report the subsequent filing of the Columbus noncommercial educational FM application (an item concededly the fault of current communications counsel which was reported twice, voluntarily by the applicant, before anything was raised by Mrs. Scantland). In several instances, although reporting was not required, as in the Skidelsky case, Mr. Casagrande in some other context has provided documents which referred to the matters in question, evidencing lack of intent to conceal any of this information, all of which has been found in, and taken from, the public records of the Commission or the Courts.

III.

So-called operational violations and misrepresentations

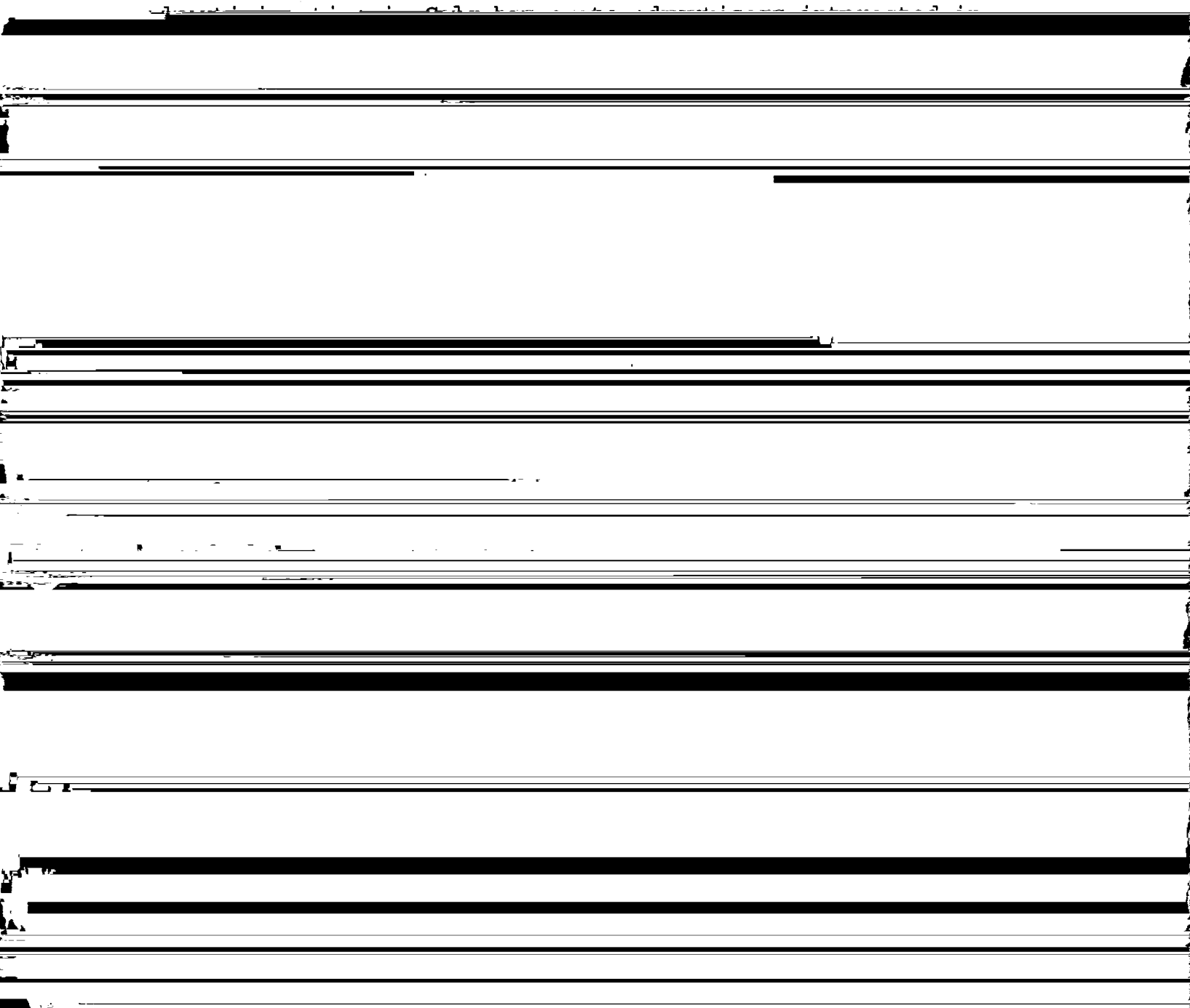
7. Nine so-called operational violations, including sporadic rhetoric concerning misrepresentation, have been alleged (petition at 9-25). Each will be discussed in turn:

(a) That M.M. Group, Inc. had a series of difficulties in the modification of the directional facilities of radio station WCFL. Mrs. Scantland has taken selected items from the

Commission's files regarding matters which the Commission has considered and as to which no further action has been taken. When M.M. Group, Inc. declined to pay the forfeiture notice for certain violations which occurred in 1990, the Commission referred the matter to the Department of Justice (see opinion letters of communications counsel for M.M. Group, Inc. attached as Exhibit 3), which has taken no action to collect the forfeiture. Notwithstanding difficulties in completion of construction and relative to special temporary authorization requests, the Commission licensed the modified operation and took no further action following receipt of the licensee's response to its notice of violation in 1992. The person primarily responsible for the technical operations of WCFL was not Mr. Casagrande, but rather, Mark S. Litton, his co-owner and Vice President who was in charge of day-to-day management and operations. Mr. Litton enlisted the aid of communications legal and engineering counsel to advise and assist him during the difficult period when modified facilities were under construction. There were no material misrepresentations to the Commission. When the station operated at power in excess of the interim STA authority, the engineer at the station made an error in establishing the operating power for which he was discharged when this error was discovered. While there is no fence in the immediate area around the transmitter building, the access road to the property itself is restricted with a locked gate.

(b) That one Virgil Royer has measured the monitor points

of WRNJ(AM), Circleville, Ohio and determined that the station operates with "gross deviations at the monitor points" including in the direction of Columbus. Again, the person primarily responsible for the technical operations of this station has been Mr. Litton, not Mr. Casagrande. The implication that this station is intentionally seeking to provide a greater signal over Columbus is unfounded inasmuch this AM station does not sell



(d) That (i) the location of the main studio of WWHT(FM) was changed without notice to the FCC and (ii) that the current main studio of the station does not comply with Commission

two blocks, to 103 South Main Street in Marysville, where it is now co-located with radio station WUCO. While an employee of the radio station owned by Mr. and Mrs. Scantland, Mr. Beickelman, claims to have been told by an unnamed lady that the studio of WWHT was not located there, this gentleman in fact was shown the WWHT public file as he had requested. It is acknowledged that this change in the main studio location of approximately two blocks within the community of license was not reported to the Commission, an oversight which is being corrected contemporaneously with the filing of this opposition. However, there was no intent to deceive the Commission on this score, as the reporting of such a move would not have occasioned any conceivable controversy with the FCC or any conceivable regulatory problem for the licensee. There was no motive to conceal the studio move. It was simply overlooked. Mr. Beickelman's report of a hearsay conversation with an unnamed lady is no basis to add an issue regarding the station's compliance with the Commission's main studio rules and policies, as stated in Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations, 3 FCC Rcd. 5024 (Commission 1988); Jones Eastern of the Outer Banks, Inc., 6 FCC Rcd. 3615 (Commission 1991), opinion on reconsideration, 7 FCC

other staff persons are located or work on a part-time basis at the main studio location, providing a presence there during regular business hours, and WWHT(FM) owns equipment and also leases equipment by means of which, among other things, a weekly local public affairs program is produced at the main studio location. There is no resemblance to Magada, Ltd., 8 FCC Rcd. 3225 (Mass Media Bureau 1993), cited by Mrs. Scantland (petition at 17), in which a monetary forfeiture was initiated for violation of the main studio requirements where the licensee had no main studio quarters at all, acknowledged that it was continuing to look for a station that would lease premises to it for that purpose, and kept its public file in the local library.

(e) That there was some question concerning the main studio location of station WZZT(FM), Johnstown, Ohio during the period 1986-1988. The sole basis for this allegation is a letter in the Commission's files which refers to charges made by a competitor station and WZZT's response, states that the conflicting charges and response could not be reconciled, states that the Commission thus sent in its own investigators to the station, states that the Commission's investigators found that WZZT was then operating in accordance with the Commission's rules regarding the main studios and location of the public file, and concludes that no further action would be taken in such matters. Again, as in the case of the directional operation of WCFL, item (a) above, Mrs. Scantland is seeking to raise a matter taken purely from the FCC license files where the federal government has determined that no

further action is warranted.

(f) That a review of the Commission's records reveals that no annual employment reports were filed for any of the six stations then licensed to M.M. Group, Inc. in either 1991 or 1992, also that no annual employment report was filed for one of those stations in 1988. Well, as esteemed counsel for Mrs. Scantland may well know, the Commission's records of annual employment reports, ownership reports, contracts filed under 47 C.F.R. §73.3613, and such, are not infallible. Messrs. Casagrande and Litton have no information on the station back in 1988, which has since gone into receivership. However, for all six stations, there are copies of the annual employment reports and the transmittal letter from communications counsel to the Commission, attached as Exhibit 8. For the three stations currently owned by Tel Lease, Inc., there are copies of the annual employment reports for 1992, but no copy of any transmittal letter, attached as Exhibit 9. Mr. Litton, who was in charge of the preparation and filing of these reports, recalls that they were filed with the FCC either directly or through then communications counsel.¹ As a precaution and not as an admission of error, duplicate copies of these 1992 annual employment reports are being filed with the Commission contemporaneously with the filing of this pleading.

¹ The legal services of Haley, Bader & Potts were terminated in July 1992. Since then and with the institution of the lawsuit referred to earlier, Messrs. Casagrande/Litton and the law firm are estranged, which precludes the ability to check with the law firm for verification of items such as this.

(g) That review of the Commission's records reveals that no annual ownership reports were filed for any of the six stations then licensed to M.M. Group, Inc. in either 1991 or 1992. For 1991, there are copies of the annual ownership reports that were prepared by then communications counsel and photocopies of the reports showing the signature of Mr. Litton, who was primarily responsible for this activity, attached as Exhibit 10. For 1992, attached as Exhibit 11 is Mr. Litton's letter to then communications counsel regarding preparation of the 1992 annual ownership reports to the effect that there has been no change in information in the 1991 annual ownership reports. Mr. Litton believes, but has no written proof, that the 1991 ownership reports were filed as signed by him. He believes, but has no written proof, that in 1992 statements were filed to the effect that there was no change in information. As a precaution and not as an admission of error, duplicate copies of the 1991 annual ownership reports and 1992 statements of no change in information are being filed with the Commission contemporaneously with the filing of this pleading.

(h) That a review of the Commission's files reveals that no letter was ever filed reporting consummation of the buy-out of the stock of Messrs. Riggs and Hutchinson in WWHT(FM) which took place in 1990 nor has an ownership report reflecting such consummation been found. Two copies of the letter reporting such consummation and transmittal letter from then communications counsel are attached as Exhibit 12, one from the licensee's files





and the other from the Commission's files. No ownership report concerning consummation of the transaction has been found, although this transaction was a major undertaking by former communications counsel who, in June 1991, issued opinion letters to a financing institution that made reference to the transaction (Exhibit 3) and it seems highly unusual that with such attention to the matter, and with the filing of the consummation letter, the follow-up ownership report was never prepared and filed. The

overreaction for which we recommend that Mrs. Scantland or her counsel, as may be appropriate, take a valium and lie down for awhile. Let's start with the first three cases cited, petition at 20, which are Faulkner Radio, Inc., 88 FCC2d 612, 50 RR2d 814 (Commission 1981), citing Star Stations of Indiana, Inc., 51 FCC2d 95, 32 RR2d 1151 (Commission 1975), affirmed sub nom. Star Broadcasting, Inc. v. FCC, 527 F.2d 853 (D.C.Cir. 1975), cert denied, 425 US 992 (1976) and United Broadcasting Co., 49 RR2d 597 (Commission 1981).

9. The Faulkner case seems a strange one for Mrs. Scantland to cite in support of her cause. In Faulkner, the Commission granted an application for renewal of license notwithstanding evidence that the applicant had been found guilty of filing an unprincipled "strike petition" against the application of a would-be competitor for a new station constituting an abuse of the Commission's processes, had solicited another party to make unjustified charges in that petition, had encouraged the owner of a transmitter site to refuse to renew an option for the site held by the would-be competitor, and had made numerous misrepresentations to the Commission concerning these matters. Here, even as alleged by Mrs. Scantland (most of which allegations have been shown to be totally without foundation), there is nothing remotely resembling the conduct in Faulkner which the Commission held did not warrant denial of the renewal application.

10. Star Stations and United Broadcasting are probably two

of the most celebrated and infamous cases of denial of license renewal applications in the Commission's history. In Star Stations, Commissioner Lee dissenting, the Commission denied the license renewal applications of five radio stations in Indianapolis, Omaha and Vancouver for a long history of misleading advertising of ratings, fraudulent billing, fraudulent contests, illegal favored treatment of some politicians by not collecting amounts due for paid political advertising, deliberate one-sided news coverage of political campaigns, and harassment of former employees who might be witnesses against the licensee. In



misconduct.

11. Mrs. Scantland's quotation, petition at 21-22, from the Policy Regarding Character Qualifications and Broadcast Licensing, 102 FCC2d 1179, 59 RR2d 801, 822 (Commission 1986) fails to also quote the related parts of the policy statement which refer to regarding "consideration of mitigating factors" in dealing with misrepresentations to the FCC and stating "...Commission policy will ordinarily be to consider all of the facts of a case in making decisions as to the disposition of matters involving misrepresentation or lack of candor." 59 RR2d at 823, ¶¶60-61.

12. The only two arguable misrepresentations claimed by Mrs. Scantland, petition at 22, are (a) the failure to report the unresolved hearing issue in Westerville proceeding and (b) the lack of a fence around the tower of WCFL as set forth in the license application, FCC Form 302. For each of these we have shown circumstances reflecting no deliberate or material misrepresentation, ¶4(a) and ¶7(a), supra. (a) The unresolved issue at the time of settlement of the Westerville proceeding had to do with failure to provide ownership and financial documents, which were found to be in "considerable disarray." The issue spoke in terms of potential disqualification for violation of "filing, reporting and candor requirements." It is not at all clear that this was a "character" issue within the meaning of FCC Form 301. Mr. Casagrande did not think to report this as a "character" issue nor, apparently, did his then communications

counsel who was aware of his involvement in the Westerville. Moreover, Mr. Casagrande was the smallest of four stockholders in the application. And, the communications counsel for the applicant was Tom Root, whose proclivity for sloppiness in ownership and financial documents, among other things, was to become well known by this Commission. (b) While there is no fence in the immediate area of the transmitter building and tower of WCFL, a station that is now in receivership, the access road to the property itself is restricted with a locked gate. Given these mitigating facts and circumstances, neither item is a material or deliberate misrepresentation meriting further consideration.²

13. The Policy Statement on Comparative Broadcast Hearings, 1 FCC Rcd. 393, 398, 5 RR2d 1901, 1912-13 (Commission 1965) contains only a brief reference to what constitutes an unusually

² The Westerville application was filed in 1979, which is probably the time when the ownership and financial documents in question were created (or not created, as the case may be). This was 14 years ago. The attorney who was involved in the creation (or non-creation, as the case may be) of the documents, Mr. Root, is currently serving a prison sentence for his role in criminal fraud involving a series of other applications involving an FCC application mill known as Sonrise Management Services, Inc. See Georgia Public Telecommunications Commission, 7 FCC Rcd. 2942, 1942 (Rev.Bd. 1992) (subsequent history on issues not germane to this citation are omitted). Under these circumstances, as well as the circumstances in the text above, there is no reason or purpose to be served in attempting to try the 14-year old unresolved Westerville issue here, a result that is not required under Allegheny County Broadcasters, Inc., 83 FCC2d 371, 48 RR2d 941 (Commission 1980), cited in the petition at 23, n. 12.

bad³ broadcast record, which appears to be a reference to programming service rather than technical operations or other non-programming matters. While it has since been applied in a broader context, as the cases cited by Mrs. Scantland show, this has been in cases involving different and vastly more egregious circumstances than anything Mrs. Scantland has even alleged (much less made a prima facie showing of) here. Moreover, all four of the cases cited and relied upon by Mrs. Scantland, petition at 24, are 20 years old or more. They are East St. Louis Broadcasting Co., 9 FCC2d 212, 10 RR2d 859 (Rev.Bd. 1967); Athens Broadcasting Co., 21 FCC2d 161, 18 RR2d 231 (Commission 1972); DuPage County Broadcasting, Inc., 21 FCC2d 395, 18 RR2d 321 (Commission 1970); and WGOE, Inc., 43 FCC2d 815, 28 RR2d 759 (Rev.Bd. 1973).

14. In East St. Louis, the Review Board designated an issue for misuse of the station in ways not relevant here, e.g., threatening to go on the air and demean a bank with which the licensee had a feud, using the station to attack other radio stations in the area, threatening the local telephone company on the air, making false accusations against and refusing to cooperate with a transferee of the station, and the like. The Athens decision is also inapposite here. The Commission ordered

³ In the personal opinion of the undersigned counsel, the word "bad," like the word "good," is vastly over-used. These two words should largely be restricted to references to food and wine. They should never be used in reference to children or pets, and sparingly in reference to grown-ups, ideas or even government policies.

a hearing concerning the broadcast record of a station that had proposed to devote 12% of its programming to public affairs programming, yet did not have a single public affairs program during the composite week, broadcast a misleading contest, violated the lottery rules, placed a station in bankruptcy and had interests in seven stations over a ten year period.⁴

15. Dupage and WGOE are also inapposite here. In DuPage the Commission designated an issue regarding a daytime AM station that signed on before sunrise and remained on the air after sunset in a naked, deliberate, indeed defiant violation of its license over a period of at least a year and even for a period of time after the FCC denied its waiver request to broadcast after sunset. In WGOE, the Commission had originally designed an issue to consider a number of technical rule violations and then, in the opinion cited, the Review Board added a further issue to consider continuation of those same identical rule violations after the hearing on the originally designated issue.

IV. Conclusion

16. For the foregoing reasons, the petition to enlarge issues should be denied.

⁴ This case was decided during a period of time when applicants were required to report bankruptcies on FCC Form 301, which is no longer required, and when the Commission had a three-year rule and policies against trafficking in licenses, which rule and policies were abandoned in 1982. Transfer of Broadcast Facilities, 52 RR2d 1081 (Commission).